

§ 2.772 Authority of the Secretary to rule on procedural matters.

When briefs, motions or other papers listed herein are submitted to the Commission itself, as opposed to officers who have been delegated authority to act for the Commission, the Secretary or the Assistant Secretary are authorized to:

- (a) Prescribe schedules for the filing of briefs, motions, or other pleadings, where such schedules may differ from those elsewhere prescribed in these rules or where these rules do not prescribe a schedule;
- (b) Rule on motions for extensions of time;
- (c) Reject motions, briefs, pleadings, and other documents filed with the Commission later than the time prescribed by the Secretary or the Assistant Secretary or established by an order, rule, or regulation of the Commission unless good cause is shown for the late filing;
- (d) Prescribe all procedural arrangements relating to any oral argument to be held before the Commission;
- (e) Extend the time for the Commission to rule on a petition for review under 10 CFR 2.786(b);
- (f) Extend the time for the Commission to grant review on its own motion under 10 CFR 2.786(a);
- (g) Extend time for Commission review on its own motion of a Director's denial under 10 CFR 2.206(c);
- (h) Direct pleadings improperly filed before the Commission to the appropriate adjudicatory board for action;
- (i) Deny a request for hearings, where the request fails to comply with the Commission's pleading requirements set forth in this part, and fails to set forth an arguable basis for further proceedings;
- (j) Refer to the Atomic Safety and Licensing Board Panel or an Administrative Law Judge, as appropriate, requests for hearings not falling under § 2.104 of this part, where the requester is entitled to further proceedings; and
- (k) Take action on minor procedural matters.

[39 FR 24219, July 1, 1974, as amended at 43 FR 22346, May 25, 1978; 46 FR 34794, July 6, 1981; 47 FR 47803, Sept. 28, 1982]

RESTRICTED COMMUNICATIONS

§ 2.780 Ex parte communications.

In any proceeding under this subpart—

(a) Interested persons outside the agency may not make or knowingly cause to be made to any Commission adjudicatory employee, any ex parte communication relevant to the merits of the proceeding.

(b) Commission adjudicatory employees may not request or entertain from any interested person outside the agency or make or knowingly cause to be made to any interested person outside the agency, and ex parte communication relevant to the merits of the proceeding.

(c) Any Commission adjudicatory employee who receives, makes, or knowingly causes to be made a communication prohibited by this section shall ensure that it and any responses to the communication promptly are served on the parties and placed in the public record of the proceeding. In the case of oral communications, a written summary must be served and placed in the public record of the proceeding.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Commission or other adjudicatory employee presiding in a proceeding may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the violation.

(e) (1) The prohibitions of this section apply—

(i) When a notice of hearing or other comparable order is issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.204, 2.205(e), or 2.703; or

(ii) Whenever the interested person or Commission adjudicatory employee responsible for the communication has knowledge that a notice of hearing or other comparable order will be issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.204, 2.205(e), or 2.703.

(2) The prohibitions of this section cease to apply to ex parte communications relevant to the merits of a full or partial initial decision when, in accordance with § 2.786, the time has expired for Commission review of the decision.

(f) The prohibitions in this section do not apply to—

(1) Requests for and the provision of status reports;

(2) Communications specifically permitted by statute or regulation;

(3) Communications made to or by Commission adjudicatory employees in the Office of the General Counsel regarding matters pending before a court or another agency; and

(4) Communications regarding generic issues involving public health and safety or other statutory responsibilities of the agency (e.g., rulemakings, congressional hearings on legislation, budgetary planning) not associated with the resolution of any proceeding under this subpart pending before the NRC.

[53 FR 10365, Mar. 31, 1988, as amended at 56 FR 29409, June 27, 1991]

§ 2.781 Separation of functions.

(a) In any proceeding under this subpart, any NRC officer or employee engaged in the performance of any investigative or litigating function in that proceeding or in a factually related proceeding may not participate in or advise a Commission adjudicatory employee about the initial or final decision on any disputed issue in that proceeding, except—

(1) As witness or counsel in the proceeding;

(2) Through a written communication served on all parties and made on the record of the proceeding; or

(3) Through an oral communication made both with reasonable prior notice to all parties and with reasonable opportunity for all parties to respond.

(b) The prohibition in paragraph (a) of this section does not apply to—

(1) Communications to or from any Commission adjudicatory employee regarding—

(i) The status of a proceeding;

(ii) Matters with regard to which the communications specifically are permitted by statute or regulation;

(iii) Agency participation in matters pending before a court or another agency; or

(iv) Generic issues involving public health and safety or other statutory responsibilities of the agency (e.g., rulemakings, congressional hearings on legislation, budgetary planning) not associated with the resolution of any proceeding under this subpart pending before the NRC.

(2) Communications to or from Commissioners, members of their personal staffs, Commission adjudicatory employees in the Office of the General Counsel, and the Secretary and employees of the Office of the Secretary, regarding—

(i) Initiation or direction of an investigation or initiation of an enforcement proceeding;

(ii) Supervision of agency staff to ensure compliance with the general policies and procedures of the agency;

(iii) Staff priorities and schedules or the allocation of agency resources; or

(iv) General regulatory, scientific, or engineering principles that are useful for an understanding of the issues in a proceeding and are not contested in the proceeding.

(3) None of the communications permitted by paragraph (b)(2) (i) through (iii) of this section is to be associated by the Commission adjudicatory employee or the NRC officer or employee performing investigative or litigating functions with the resolution of any proceeding under this subpart pending before the NRC.

(c) Any Commission adjudicatory employee who receives a communication prohibited under paragraph (a) of this section shall ensure that it and any responses to the communication are placed in the public record of the proceeding and served on the parties. In the case of oral communications, a written summary must be served and placed in the public record of the proceeding.

(d)(1) The prohibitions in this section apply—

(i) When a notice of hearing or other comparable order is issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.204, 2.205(e), or 2.703; or

(ii) Whenever an NRC officer or employee who is or has reasonable cause